

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTORIA P. MAGANA, an  
individual,

Plaintiff,

v.

WELLS FARGO BANK, N.A.; LSI TITLE  
COMPANY, a California  
Corporation; and NDEX WEST LLC, a  
Delaware limited liability  
corporation,

Defendants.

No. C 11-3993 CW

ORDER GRANTING  
ATTORNEY'S MOTION  
TO WITHDRAW,  
SETTING BRIEFING  
SCHEDULE FOR  
MOTION TO DISMISS  
AND MOTION TO  
STRIKE, RESETTING  
ADR DEADLINE AND  
RESETTING CASE  
MANAGEMENT  
CONFERENCE

Movant Nick Pacheco, Esq., of Nick Pacheco Law Group, APC,  
counsel for Plaintiff Victoria P. Magana, seeks leave of this  
Court, pursuant to Local Rule 11-5(a), and under California Rules  
of Professional Conduct 3-700, to withdraw as counsel for  
Plaintiff. Plaintiff opposes the motion. The matter was heard on  
October 6, 2011. Having considered all of the parties'  
submissions and oral argument on the motion, the Court GRANTS the  
motion to withdraw.

Civil Local Rule 11-4(a)(1) requires attorneys practicing in  
this district to "comply with the standards of professional  
conduct required of members of the State Bar of California." The  
California Rules of Professional Conduct allow members of the  
California Bar to withdraw from representation with leave of the  
Court for several reasons, including if a client "renders it  
unreasonably difficult for the member to carry out the employment  
effectively," if the client "breaches an agreement or obligation

1 to the member as to expenses or fees," or for "other good cause."  
2 Cal. R. Prof. Conduct 3-700(C)(1)(d),(f), 3-700(C)(6). Before  
3 withdrawing, an attorney must take "reasonable steps to avoid  
4 reasonably foreseeable prejudice to the rights of the client,  
5 including due notice to the client, [and] allowing time for  
6 employment of other counsel[.]" Cal. R. Prof. Conduct  
7 3-700(A)(2).

8 In the present case, Movant argues that there is good cause  
9 for withdrawal under each of these subsections. Movant contends,  
10 and Plaintiff admits, that Plaintiff has stopped payment on the  
11 retainer check and has refused to pay Movant. Plaintiff asserts  
12 that she is not required to pay Movant at this time, because she  
13 employed Movant to perform a loan modification for her and she  
14 does not have to pay Movant until he has obtained a loan  
15 modification for her. However, the record demonstrates that  
16 Plaintiff employed Movant to pursue the instant action to prevent  
17 the foreclosure of her house. Movant also asserts that Plaintiff  
18 has been uncommunicative with him and his firm, and that  
19 Plaintiff's husband or boyfriend has harassed the firm.  
20 Accordingly, the Court finds that Plaintiff's failure to pay for  
21 legal services and the breakdown of the attorney-client  
22 relationship, which renders representation unreasonably difficult,  
23 constitute good cause for withdrawal. Further, the Court finds  
24 that Movant taken reasonable steps to avoid reasonably foreseeable  
25 prejudice to Plaintiff, including providing Plaintiff with timely  
26 notice of his intent to withdraw and of this Motion, allowing  
27 ample time to secure alternate counsel, and continuing to  
28 represent her in obtaining a preliminary injunction.

1 The motion to withdraw is GRANTED. If Plaintiff wishes to  
2 pursue this litigation, she must retain new counsel or represent  
3 herself in propria persona. Until and unless Plaintiff retains  
4 new counsel, Defendants must serve a paper copy on Plaintiff of  
5 any documents that Defendants file on the court's Electronic Case  
6 Filing system.

7 The current briefing and hearing schedules for Defendants'  
8 pending Motion to Dismiss and Motion to Strike are vacated.  
9 Plaintiff's opposition to those motions is due on November 17,  
10 2011. Defendants' reply, if any, is due on November 28, 2011. The  
11 motions will be decided on the papers. If Plaintiff fails to file  
12 an opposition to these motions, this case will be dismissed for  
13 failure to prosecute.

14 In an order dated August 29, 2011, this Court referred the  
15 parties to the Alternative Dispute Resolution (ADR) Unit for an  
16 initial assessment by telephone by September 16, 2011. The  
17 parties have participated in one telephone call with the ADR unit  
18 and have represented to the Court that they need to participate in  
19 a second call to complete the initial assessment. The parties  
20 shall participate in a further telephone conference to be  
21 scheduled by the ADR Unit for a date before November 10, 2011.

22 The parties are currently set to appear for a case management  
23 conference on November 8, 2011 at 2:00 p.m. This case management  
24 conference is continued to December 20, 2011 at 2:00 p.m.  
25 Pursuant to this Court's Local Rule 16-9(a) and the Standing Order  
26 for All Judges of the Northern District of California, the parties  
27 are to submit a Joint Case Management Statement, or separate  
28 statements, on or before December 13, 2011. In the event that

1 Plaintiff fails to file a statement or does not appear at the  
2 conference in person or through counsel, her claims will be  
3 dismissed for failure to prosecute.

4 IT IS SO ORDERED.

5  
6 Dated: 10/18/2011

  
CLAUDIA WILKEN  
United States District Judge

United States District Court  
For the Northern District of California